

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
ADMINISTRATIVE ADJUDICATION DIVISION

IN RE: Block Island Power Company AAD No. 92-002/GWE
Notice of Violation No. UST 91-0047

DECISION AND ORDER ON RESPONDENT'S MOTION TO DISMISS
OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT

This matter came before Hearing Officer Patricia Byrnes pursuant to a request by Respondent, Block Island Power to dismiss the pending violation in accordance with Superior Court Rule 12 (Judgment on Pleadings) or in the alternative grant Respondent summary judgment.

The Department of Environmental Management ("DEM") has not objected to Respondent's motion.

DECISION AND ORDER

The Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters promulgated in July 1990 (hereinafter AAD Rules) sets forth the requirements all parties must follow during the adjudicatory process.

AAD Rule 8.00 governs the procedures for motion practice before this tribunal. AAD Rule 8.00(2) notifies the non-moving party that "within seven (7) days after a written motion is filed with the Administrative Adjudication Division ("AAD"), the parties opposing said motion must file a written objection . . ." and provides "that a failure to file a written objection in the prescribed time is deemed a waiver of that objection."

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In the instant case, counsel for Block Island Power filed his objection with AAD on March 12, 1993. In accordance with AAD Rule 5.00(b), the computation of the seven (7)-day objection period begins on the first day following that act which initiates the running of the time period. The last day of the time period is included unless it is a Saturday, Sunday or legal holiday in which case the period runs until the end of business of the following day. Pursuant to AAD Rule 5(b), the State's objection was due to be filed at the end of business on March 19, 1993. To date, no objection has been filed.

Therefore, pursuant to AAD Rule 8.00 and the applicable administrative decisions (see Carol Ann Mancini, AAD No. 91-039/IE (Department's Motion to Dismiss, granted 1/13/92); Fredric Dupuis Spotless Cleaners, AAD No. 92-001/AHE (Respondent's Motion to Dismiss, granted 2/3/92), the Hearing Officer makes the following findings of fact and conclusions of law:

1. That Respondent filed a motion to dismiss or in the alternative summary judgment with this tribunal on March 12, 1993.
2. That Department of Environmental Management had seven (7) days to file an objection.
3. That said objection was due on Friday, March 19, 1993.

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4. That the Department of Environmental Management did not file an objection to Respondent's motion.
5. That pursuant to AAD Rule 8.00 no objection to a motion is deemed a waiver of that objection.
6. That pursuant to AAD Rule 8.00, the Department of Environmental Management has waived its objection to Respondent's motion.
7. That this motion is properly before the Hearing Officer pursuant to R.I.G.L. Section 42-17.1-2 et seq. as amended, R.I.G.L. Section 42-17.7-1 et seq. as amended, and R.I.G.L. Section 42-35 et seq. as amended. The duly-promulgated Regulations for underground storage facilities used for petroleum products and hazardous materials and the Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters.

Wherefore, it is hereby ordered:

ORDER

1. That Respondent's motion to dismiss Notice of Violation No. UST 91-0047, AAD No. 92-002/GWE is granted.
2. That notice of violation and penalty No. UST 91-0047 is dismissed.

Entered as an Administrative Order this 2nd day of
April, 1993.

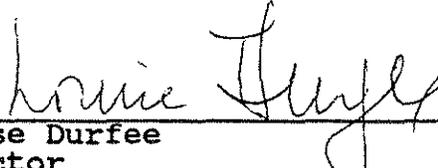


Patricia Byrnes
Hearing Officer
Department of Environmental Management
Administrative Adjudication Division
One Capitol Hill, Third Floor
Providence, RI 02908

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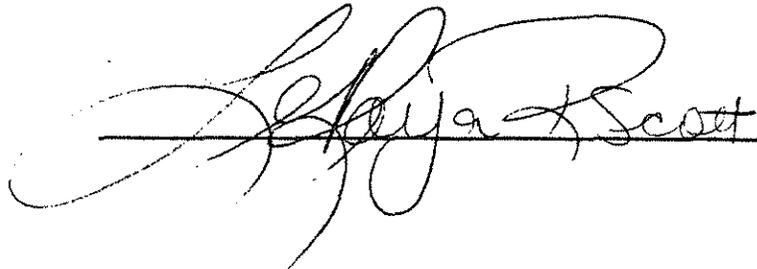
Entered as a Final Order this 5 day of April,
1993.



Louise Durfee
Director
Department of Environmental Management
9 Hayes Street
Providence, RI 02908

CERTIFICATION

I hereby certify that I caused a true copy of the within Decision and Order to be forwarded via regular mail, postage prepaid to Sean O. Coffey, Esq., Hinckley, Allen & Snyder, 1500 Fleet Center, Providence, RI 02903 and via interoffice mail to Gary Powers, Esq., Office of Legal Services, 9 Hayes Street, Providence, RI 02908 on this 5th day of April, 1993.



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